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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/806,949	04/03/2001	Robert Jean Legro	24544	9571

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1030 15th STREET
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WASHINGTON, DC 20005

EXAMINER

VALENTI, ANDREA M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 08/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/806,949

Applicant(s)

LEGRO ET AL.

Examiner

Andrea M. Valenti

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,198,782 to Kydonieus in view of U.S. Patent No. 3,950,891 to Hinkes.

Regarding Claim 1, Kydonieus teaches a method for protection of germinating seed with a pesticide (Col. 4 line 19-22), characterized in the seeds and pesticide-containing pellets are sown as individual pellets at the same time (Fig. 4 #15 and 16).

Kydonieus is silent on explicitly teaching a seed pellet. However, Hinkes teaches it is old and notoriously well-known in the art to pelletize seeds for ease of mechanical sowing. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Kydonieus to include a pelletized seed for precise mechanical planting for small seed sizes (Hinkes Col. 2 line 15-27).

Regarding Claim 2, Kydonieus as modified teaches that the pesticide-containing pellets have substantially the same shape and size as the seed-containing pellets (Kydonieus Fig. 4 # 15 and 16).

Regarding Claim 3, Kydonieus as modified inherently teaches pesticide-containing pellets comprise a dose of pesticide that is sufficient for one seed germ

Regarding Claim 4, Kydonieus as modified teaches the pesticide-containing pellets contain a filler material (Kydonieus Col. 3 line 68).

Regarding Claim 5, Kydonieus as modified discloses that the pesticide-containing pellets and the seed-containing pellets have a substantially uniform diameter (Fig. 4 #15 and 16), but is silent on the range from 0.5-5mm. However, it would have been obvious to one of ordinary skill in the art to modify the teachings to accommodate different seed varieties.

Regarding Claim 6, Kydonieus as modified teaches a pesticide-containing pellet to be used in the combination with a seed-containing pellet (Kydonieus Col. 3 line 55-62 and Col. 4 line 19-22).

Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Canadian Patent 1143651 to Lemon in view of U.S. Patent No. 3,950,891 to Hinkes.

Regarding Claim 1, Lemon teaches a method for protection of germinating seed, characterized in the seeds and pesticide-containing pellets are sown as individual pellets at the same time (Lemon page 1 line 9, 10, 13; page 2 line 14-15; page 3 line 11-15). Lemon is silent on the seed being palletized. However, Hinkes teaches it is old and notoriously well-known in the art to pelletize seeds for ease of mechanical sowing. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Lemon to include a pelletized seed for precise mechanical planting for small seed sizes (Hinkes Col. 2 line 15-27).

Regarding Claim 2, Lemon as modified teaches that the pesticide-containing pellets have substantially the same shape and size as the seed-containing pellets (Lemon page 1 line 9-10).

Regarding Claim 3, Lemon as modified teaches pesticide-containing pellets comprise a dose of pesticide that is sufficient for one seed germ (Lemon page 1 line 13-19).

Regarding Claim 4, Lemon as modified teaches the pesticide-containing pellets contain a filler material (Lemon page 4 line 20-22).

Regarding Claim 5, Lemon as modified discloses that the pesticide-containing pellets and the seed-containing pellets have a substantially uniform diameter from 0.5-5mm (Lemon page 3 line 25).

Regarding Claim 6, Lemon as modified teaches a pesticide-containing pellet to be used in the combination with a seed-containing pellet (Lemon page 1 line 9, 10, 13; page 2 line 14-15; page 3 line 11-15).

Response to Arguments

Applicant's arguments filed 30 June 2003 have been fully considered but they are not persuasive.

Merriam-Webster's Collegiate Dictionary defines **pellet** merely as "small, rounded, spherical, or cylindrical body" and a granule as a "small particle" and Kydonieus depicts the granule in Fig. 4 as a small rounded particle, i.e. a pellet. Furthermore, Kydonieus teaches that the granule is coated thus giving it further pellet qualities. In addition, the teachings of Hinkes to pelletize particles could be applied not

only to provide teachings for seeds, but to both the seed and the pesticide. The motivation for the modification is for precise mechanical planting as taught by Hinkes (Hinkes Col. 2 line 15-27). The Hinkes reference is cited merely to teach that it is old and notoriously well-known in art that pelletizing small seeds/particles increases the precision for mechanical planting. Hinkes teaches that there is accepted knowledge and motivation in the art to pelletize objects and is a valid combination with both Lemon and Kydonieus.

Applicant does not claim a dosing pattern but merely claims the seed and pesticide are sown simultaneously. Examiner maintains that Lemon and Kydomieus teach that the seeds are sown as individual pellets at the same time.

Examiner maintains that the seed and the pesticide taught by Kydonieus has **substantially** the same size and shape as per Kydonieus Fig. 4, do to the broad nature of the term **substantially**.

The use of the term **sufficient** does not explicitly claim a 1:1 ratio as presented in applicant's arguments. The broad nature of this term renders the claim unpatentable over the cited prior art since the pesticide of Kydonieus and Lemon is **sufficient** for one seed germ.

Therefore, examiner maintains that the broad nature of the claim limitations does not patentably distinguish over the teachings of the cited prior art.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-4357.

AMV



**PETER M. POON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3800**